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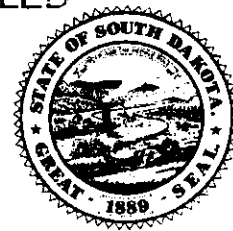
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EX PARTE OR LATE FILED

# South Dakota Public Utilities Commission

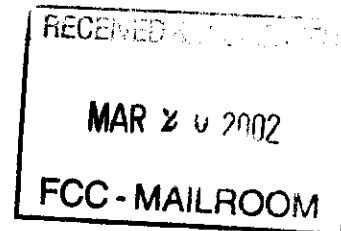
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State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

March 6, 2002

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
Portals II, TW-A325  
445 12th Street SW  
Washington, DC 20554



RE: Ex Parte Comments: Two originals filed in In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256/Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of Return Regulation, CC Docket No. 98-77; Prescribing the Authorized Rate of Return For Interstate Services of Local Exchange Carriers, CC Docket No. 98-166

Dear Secretary Caton:

This letter is intended to comply with the FCC's rules on ex parte communications. The South Dakota Public Utilities Commission (SDPUC) has submitted written ex parte comments in the above captioned proceedings concerning the South Dakota Telecommunications Association's (SDTA) Petition for Reconsideration of certain provisions of the Commission's Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166 (hereafter referred to as "MAG Order") (rel. November 8, 2001).

Enclosed are two copies of the written comments. If you have any questions about this correspondence, please do not hesitate to contact me at 605-773-3201.

Sincerely,

*Rolayne Alts Wiest*

ROLAYNE ALTS WIEST  
SDPUC ATTORNEY

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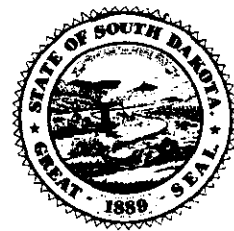
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# South Dakota Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070



March 6, 2002

Mr. William F. Caton  
Federal Communications Commission  
Portals II, TW-A325  
445 12th Street SW  
Washington, DC 20554

Chairman Michael K. Powell  
Federal Communications Commission  
445 12th Street SW, Room 8-B201  
Washington, DC 20554

Commissioner Kathleen Q. Abernathy  
Federal Communications Commission  
445 12th Street SW, Room 8-A204  
Washington, DC 20554

Commissioner Michael J. Copps  
Federal Communications Commission  
445 12th Street SW, Room 8-A302  
Washington, DC 20554

Commissioner Kevin J. Martin  
Federal Communications Commission  
445 12th Street SW, Room 8-C302  
Washington, DC 20554

RE: Ex Parte Comments: Two originals filed in In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of Return Regulation, CC Docket No. 98-77; Prescribing the Authorized Rate of Return For Interstate Services of Local Exchange Carriers, CC Docket No. 98-166

Dear Commissioners:

The South Dakota Public Utilities Commission (SDPUC) is writing this letter in support of the South Dakota Telecommunications Association's (SDTA) Petition for Reconsideration of certain provisions of the Commission's Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166 (hereafter referred to as "MAG Order") (rel. November 8, 2001).

In its Petition for Reconsideration, SDTA requests that the Commission reconsider its decision to eliminate the carrier common line charge and require rural carriers to recover their costs from their local exchange subscribers and from a new universal service support mechanism, the Interstate Common Line Support (ICLS). SDTA also requests that the Commission reconsider its decision to make the ICLS portable to competitive eligible telecommunications carriers (CETCs). After reviewing the MAG Order and the Petitions for Reconsideration, the SDPUC finds these requests to be legitimate and compelling.

As the Commission recognized in the MAG Order, the carrier common line charge was designed to allow rate-of-return carriers to recover the residual portion of their non-traffic sensitive interstate loop costs from access charges imposed on interexchange carriers. MAG Order, para 62. However, in its Order, the Commission decided that the carrier common line charge is an "implicit subsidy" because the charge recovers "above-cost rates from some end users to support below-cost rates for others . . . ." Id. at paras. 62, 68. The Commission then removes the CCL charge from the common line rate structure to reduce switched access charges imposed on interexchange carriers. Id. at para 63.

As pointed out by SDTA, missing from the Commission's analysis is any attempt to identify what portion of the carrier common line charge, if any, is actually a "subsidy" that needs to be recovered through universal service funding. SDTA Petition for Reconsideration at page 5. The Commission's reallocation of interstate loop costs to the end user through higher subscriber line charges and universal service funding ignores the fact that interexchange carriers, as users of the local loop, should pay their fair share for that use. The SDPUC believes that the Commission's desire to lower access rates may have caused it to abandon the principles of assigning costs to cost causers and basing support amounts on actual costs.

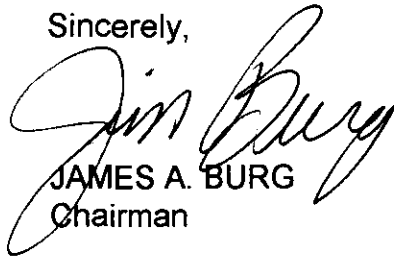
The Commission then proceeds to compound these errors by making the ICLS portable to CETCs. The ICLS consists of per-line support based upon the costs of a rural carrier. Thus, a CETC will receive support based on the rural carrier's costs, instead of the competitor's actual costs. The Commission's rationale for portable support is that competitive carriers will use the support to provide service at lower cost and will then pass those cost savings through to their customers. MAG Order, para 63. Regrettably, the Commission fails to provide any support for this optimistic statement. The Commission has placed no requirements on CETCs to pass on cost savings to their customers. Further, in order to receive this portable support, a CETC must merely file a letter asserting they will use the support for what it is intended. MAG Order, para. 176.

Even more glaring is the Commission's failure to develop any record demonstrating that CETCs construct similar facilities and incur similar costs of rural carriers. This lack of record, while disturbing, is not surprising since, as asserted by the Western Alliance, SDTA, and the National Telephone Cooperative Association, a CETC is likely to be a wireless carrier whose costs to serve rural areas are less than costs incurred by an incumbent rural provider. Western Alliance Petition for Reconsideration at pages 9-12; SDTA Petition for Reconsideration at pages 7-8; NTCA Petition for Reconsideration at pages 8-9. It is rather astounding that the Commission can find that rural incumbent carriers are receiving an implicit subsidy even though their CCL charges were based on their costs, and then turn around and

give support to CETCs based on costs that are wholly divorced from the CETC's actual costs. The SDPUC fails to find any language in the federal Act which mandates that the Commission devise ways to subsidize competition in rural areas.

The SDPUC believes that SDTA, as a representative of South Dakota's rural carriers, has raised valid issues that need to be considered by the Commission. The SDPUC urges the Commission to grant SDTA's Petition for Reconsideration.

Sincerely,



JAMES A. BURG  
Chairman



PAM NELSON  
Commissioner



ROBERT K. SAHR  
Commissioner

cc: Honorable Tom Daschle  
Honorable Tim Johnson  
Honorable John Thune  
Ms. Dorothy Atwood, CCB